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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,607

10/27/2003

Brian E. Le Gette

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EDELL, SHAPIRO & FINNAN, LLC
1901 RESEARCH BOULEVARD
SUITE 400
ROCKVILLE, MD 20850

EXAMINER

SUTTON, ANDREW W

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

04/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/693,607	Applicant(s) LE GETTE ET AL.	
	Examiner ANDREW W. SUTTON	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-11 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11 and 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/23/08, 7/27/07, 6/21/07, 1/12/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

The information disclosure statements filed 1/12/07 fail to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

The references marked not considered were so due to no English language abstract given, reference not submitted, a copied material that is not legible, or not a valid publication number.

The History of the USPTO reference was not considered as there appears to be no reason the reference is relevant other than the application was made to the USPTO.

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

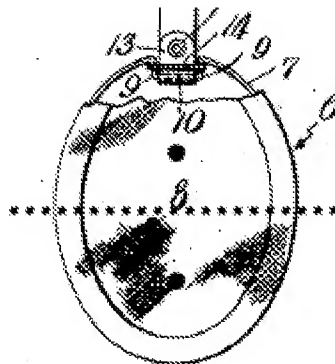
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

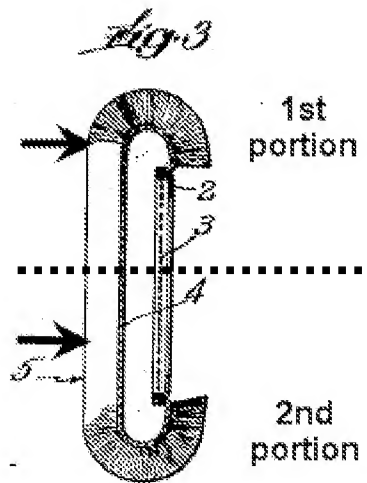
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 and 14-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Bean (US 2,149,383).

As to claim 9, 16 and 17, Bean illustrates in Figs. 1-5 an ear warmer frame including a band portion 18 and an ear portion 7. The ear portion 7 is has an elliptical shape as shown below. Since the ear portion has an elliptical shape, it is inherent that the elliptical shape has two perpendicular axes as claimed. These two axes are shown as the dots above and below the dotted line. The line below divides the ear portion in half and shows the first portion (above the line) and a second portion (below the line) that are each curved around the first and second axes. Since there is no straight portion, to break up the first and second portion, the examiner feels that the ear portion is made entirely of the first and second portion thus means the claimed limitations.



As to the limitation to the thickness, Bean illustrates a first and second portion as illustrated bellow with the thickness of the arrow at the first portion being thinner than the thickness of the second portion at the arrow in the second portion.



As to claim 10, Bean illustrates in Fig. 5 a band portion 17 including a first and second member, first member of the band portion has a first end portion and a second end portion, the second end portion of the first member is slidably coupled 20 to the second member of the band portion, the ear portion 5 coupled proximate to the first end portion of the first member of the band portion.

As to claim 11, Bean illustrates in Fig. 4 as shown above an ear portion 7 that tapers from the bottom of the first portion (at the dividing line) to the second portion (bottom half of the frame 7).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bean (US 2,149,383) in view of Bavetta (US 6,499,146). Bean teaches a band with two coupled members that are capable of sliding as discussed above. However Bean does not teach the use of a plurality of recesses to engage the first end of the second member. Bavetta illustrates (Fig. 4A)

the use of a band including a first member 210 with an outer surface including a plurality of recesses to engage the second member 200. It would have been obvious to one of ordinary skill in the art to combine the teachings of Bean and Bavetta to provide a band with a more rigid connection.

As to claim 14, Bean illustrates in Fig. 4 a projection 10 extending in the ear portion that includes a wire 9 located in the project.

As to claim 15, Bean illustrates in Fig. 5 the frame 6 being disposed within a shell 5.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Friday 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS
16 April 2008

/Gary L. Welch/

Supervisory Patent Examiner, Art Unit 3765